

PROTOCOL OF AMENDMENT

TO THE

UNITED STATES - PERU TRADE PROMOTION AGREEMENT

The Government of the United States of America and the Government of the Republic of Peru;

Desiring to amend the United States - Peru Trade Promotion Agreement signed at Washington, DC, on April, 12, 2006, hereinafter "the Agreement",

HAVE AGREED to amend the Agreement as follows:

1. *In the Preamble, after the fifth clause insert the following two clauses:*

"AGREE that foreign investors are not hereby accorded greater substantive rights with respect to investment protections than domestic investors under domestic law where, as in the United States, protections of investor rights under domestic law equal or exceed those set forth in this Agreement;

RECOGNIZE that Article 63 of Peru's Political Constitution provides that "domestic and foreign investment are subject to the same conditions";"

2. *In the General Notes to the Tariff Schedule of the United States, add a new paragraph 5 to read as follows:*

"5. Originating goods shall not be subject to any duty provided for in heading 9901 of the HTSUS, provided that (a) the goods are imported directly from Peru into the customs territory of the United States and (b) the sum of the cost or value of the materials produced in the territory of Peru plus the direct costs of processing operations performed in the territory of Peru is not less than 35 percent of the appraised value of such goods at the time they are entered."

3. *In Chapter Nine (Government Procurement):*

- A. *Paragraph 7 of Article 9.6 shall be revised to read as follows:*

"7. For greater certainty, this Article is not intended to preclude a procuring entity from preparing, adopting, or applying technical specifications:

- (a) to promote the conservation of natural resources and the environment; or
- (b) to require a supplier to comply with generally applicable laws regarding
 - (i) fundamental principles and rights at work; or
 - (ii) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health,

in the territory in which the good is produced or the service is performed."

- B. *In note 3(a), of Section A of the Schedule of the United States to Annex 9.1 replace “www.scrantonrtg.com/secrc/fsc-codes/fsc.html” with “http://www.fedbizopps.gov/classCodes1.html”.*

4. *In Chapter Ten (Investment):*

In clause (d)(iii) of paragraph 1 of Annex 10-E insert the following at the end:

“that were incurred during the first year after the events that give rise to the claim.”

5. *In Annex I, Schedule of Peru, insert the following at the end of the **Description** in the entry for the Port Services sector:*

“For greater certainty, measures relating to the landside aspects of port activities are subject to the application of Article 22.2 (Essential Security).”

6. *In Annex II, Schedule of the United States, insert the following at the end of the **Description** in the entry for the Transportation sector:*

“For greater certainty, measures relating to the landside aspects of port activities are subject to the application of Article 22.2 (Essential Security).”

7. *In Chapter Sixteen (Intellectual Property Rights):*

A. *Paragraph 6 of Article 16.9 shall be revised to read as follows:*

- “6. (a) Each Party shall make best efforts to process patent applications and marketing approval applications expeditiously with a view to avoiding unreasonable delays. The Parties shall cooperate and provide assistance to one another to achieve these objectives.
- (b) Each Party shall provide the means to and shall, at the request of the patent owner, compensate for unreasonable delays in the issuance of a patent, other than a patent for a pharmaceutical product, by restoring patent term or patent rights. Each Party may provide the means to and may, at the request of the patent owner, compensate for unreasonable delays in the issuance of a patent for a pharmaceutical product by restoring patent term or patent rights. Any restoration under this subparagraph shall confer all of the exclusive rights of a patent subject to the same limitations and exceptions applicable to the original patent. For purposes of this subparagraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later, provided that periods attributable to actions of the patent applicant need not be included in the determination of such delays.
- (c) With respect to any pharmaceutical product that is covered by a patent, each Party may make available a restoration of the patent term or patent rights to compensate the patent owner for unreasonable curtailment of the effective patent term resulting

from the marketing approval process related to the first commercial marketing of the product in that Party. Any restoration under this subparagraph shall confer all of the exclusive rights of a patent subject to the same limitations and exceptions applicable to the original patent."

B. *Article 16.10 shall be revised to read as follows:*

"Agricultural Chemical Products

1. (a) If a Party requires or permits, as a condition of granting marketing approval for a new agricultural chemical product, the submission of information concerning safety or efficacy of the product, the Party shall not, without the consent of a person that previously submitted such safety or efficacy information to obtain marketing approval in the Party, authorize another to market a same or a similar product based on:
 - (i) the safety or efficacy information submitted in support of the marketing approval; or
 - (ii) evidence of the marketing approval,for at least ten years from the date of marketing approval in the territory of the Party.
- (b) If a Party requires or permits, in connection with granting marketing approval for a new agricultural chemical product, the submission of evidence concerning the safety or efficacy of a product that was previously approved in another territory, such as evidence of prior marketing approval in the other territory, the Party shall not, without the consent of a person that previously submitted the safety or efficacy information to obtain marketing approval in another territory, authorize another to market a same or a similar product based on:
 - (i) the safety or efficacy information submitted in support of the prior marketing approval in the other territory; or
 - (ii) evidence of prior marketing approval in the other territory,for at least ten years from the date of marketing approval of the new product in the territory of the Party. In order to receive protection under this subparagraph, a Party may require that the person providing the information in the other territory seek approval in the territory of the Party within five years after obtaining marketing approval in the other territory.
- (c) For purposes of this Article, a new agricultural chemical product is one that contains a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.

Pharmaceutical Products

2. (a) If a Party requires, as a condition for approving the marketing of a pharmaceutical product that utilizes a new chemical entity, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect against disclosure of the data of persons making such submissions, where the origination of such data involves considerable effort, except where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data are protected against unfair commercial use.
- (b) Each Party shall provide that for data subject to subparagraph (a) that are submitted to the Party after the date of entry into force of this Agreement, no person other than the person that submitted them may, without the latter's permission, rely on such data in support of an application for product approval during a reasonable period of time after their submission. For this purpose, a reasonable period shall normally mean five years from the date on which the Party granted approval to the person that produced the data for approval to market its product, taking account of the nature of the data and person's efforts and expenditures in producing them. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence or bioavailability studies.
- (c) Where a Party relies on a marketing approval granted by the other Party, and grants approval within six months of the filing of a complete application for marketing approval filed in the Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied on shall begin with the date of the first marketing approval relied on.
- (d) A Party need not apply the provisions of subparagraphs (a), (b), and (c) with respect to a pharmaceutical product that contains a chemical entity that has been previously approved in the territory of the Party for use in a pharmaceutical product.
- (e) Notwithstanding subparagraphs (a), (b), and (c), a Party may take measures to protect public health in accordance with:
 - (i) the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2) (the "Declaration");
 - (ii) any waiver of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement to implement the Declaration and in force between the Parties; and
 - (iii) any amendment of the TRIPS Agreement to implement the Declaration that enters into force with respect to the Parties.

3. Each Party shall provide:

- (a) procedures, such as judicial or administrative proceedings, and remedies, such as preliminary injunctions or equivalent effective provisional measures, for the expeditious adjudication of disputes concerning the validity or infringement of a patent with respect to patent claims that cover an approved pharmaceutical product or its approved method of use;
- (b) a transparent system to provide notice to a patent holder that another person is seeking to market an approved pharmaceutical product during the term of a patent covering the product or its approved method of use; and
- (c) sufficient time and opportunity for a patent holder to seek, prior to the marketing of an allegedly infringing product, available remedies for an infringing product.

4. Where a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting safety or efficacy information, to rely on evidence of safety or efficacy information of a product that was previously approved, such as evidence of prior marketing approval in the territory of the Party or in another territory, the Party may implement the provisions of paragraph 3 by:

- (a) implementing measures in its marketing approval process to prevent such other persons from marketing a product covered by a patent claiming the product or its approved method of use during the term of that patent, unless by consent or acquiescence of the patent owner;¹⁷ and
- (b) providing that the patent owner shall be informed of the identity of any such other person who requests marketing approval to enter the market during the term of a patent identified to the approving authority as covering that product;

provided that the Party also provides:

- (c) an expeditious administrative or judicial procedure in which the person requesting marketing approval can challenge the validity or applicability of the identified patent; and
- (d) effective rewards for a successful challenge of the validity or applicability of the patent.¹⁸

General Provisions

5. Subject to paragraph 2(e), when a product is subject to a system of marketing approval in the territory of a Party pursuant to paragraph 1 or 2 and is also covered by a patent in the territory of that Party, the Party shall not alter the term of protection that it provides pursuant to paragraph 1 or 2 in the event

¹⁷ For greater certainty, the Parties recognize that this provision does not imply that the marketing approval authority should make patent validity or infringement determinations.

¹⁸ A Party may comply with clause (d) by providing a period of marketing exclusivity for the first applicant to successfully challenge the validity or applicability of the patent.

that the patent protection terminates on a date earlier than the end of the term of protection specified in paragraph 1 or 2.”

C. *After Article 16.12, insert a new article as follows:*

“Article 16.13: Understandings Regarding Certain Public Health Measures

1. The Parties affirm their commitment to the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2).

2. The Parties have reached the following understandings regarding this Chapter.

(a) The obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health by promoting access to medicines for all, in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency. Accordingly, while reiterating their commitment to this Chapter, the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party’s right to protect public health and, in particular, to promote access to medicines for all.

(b) In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the General Council of 30 August 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540) and the WTO General Council Chairman’s statement accompanying the Decision (JOB(03)/177, WT/GC/M/82) (collectively, the “TRIPS/health solution”), this Chapter does not and should not prevent the effective utilization of the TRIPS/health solution.

(c) With respect to the aforementioned matters, if an amendment of the TRIPS Agreement enters into force with respect to the Parties and a Party’s application of a measure in conformity with that amendment violates this Chapter, the Parties shall immediately consult in order to adapt this Chapter as appropriate in the light of the amendment.”

D. *Renumber former Article 16.13 (Final Provisions) a new Article 16.14 and insert a new paragraph 3 at the end thereof to read as follows:*

“3. The Parties shall periodically review the implementation and operation of this Chapter and shall have the opportunity to undertake further negotiations to modify any of its provisions, including, as appropriate, consideration of an improvement in a Party’s level of economic development.”

8. *In Chapter Seventeen (Labor):*

A. *Article 17.1 shall be revised to read as follows:*

“The Parties reaffirm their obligations as members of the International Labor Organization (ILO).”

- B. *After Article 17.1, insert a new article as follows and the remaining articles, footnotes, and article references shall be renumbered accordingly:*

"Article 17.2: Fundamental Labor Rights¹

1. Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)* (ILO Declaration):²

- (a) freedom of association;
- (b) the effective recognition of the right to collective bargaining;
- (c) the elimination of all forms of compulsory or forced labor;
- (d) the effective abolition of child labor and, for purposes of this Agreement, a prohibition on the worst forms of child labor; and
- (e) the elimination of discrimination in respect of employment and occupation.

2. Neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its statutes or regulations implementing paragraph 1 in a manner affecting trade or investment between the Parties, where the waiver or derogation would be inconsistent with a fundamental right set out in that paragraph."

- C. *Renumbered Article 17.3 shall be revised to read as follows:*

- "1. (a) A Party shall not fail to effectively enforce its labor laws, including those it adopts or maintains in accordance with Article 17.2.1, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement.
- (b) A decision a Party makes on the distribution of enforcement resources shall not be a reason for not complying with the provisions of this Chapter. Each Party retains the right to the reasonable exercise of discretion and to *bona fide* decisions with regard to the allocation of resources between labor enforcement activities among the fundamental labor rights enumerated in Article 17.2.1, provided the exercise of such discretion and such decisions are not inconsistent with the obligations of this Chapter.³

¹ To establish a violation of an obligation under Article 17.2.1 a Party must demonstrate that the other Party has failed to adopt or maintain a statute, regulation, or practice in a manner affecting trade or investment between the Parties.

² The obligations set out in Article 17.2, as they relate to the ILO, refer only to the ILO Declaration.

³ For greater certainty, a Party retains the right to exercise reasonable enforcement discretion and to make *bona fide* decisions regarding the allocation of enforcement resources with respect to labor matters other than those relating to fundamental rights enumerated in Article 17.2.1.

2. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake labor law enforcement activities in the territory of another Party."

D. *Paragraphs 6 and 7 of renumbered Article 17.7 shall be revised to read as follows:*

"6. If the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 21.4 (Consultations) or a meeting of the Commission under Article 21.5 (Intervention of the Commission) and, as provided in Chapter Twenty-One (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may inform the Commission of how the Council has endeavored to resolve the matter through consultations.

7. No Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article."

E. *Renumbered Article 17.8 shall be revised to read as follows:*

"For purposes of this Chapter:

labor laws means a Party's statutes and regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights:

- (a) freedom of association;
- (b) the effective recognition of the right to collective bargaining;
- (c) the elimination of all forms of forced or compulsory labor;
- (d) the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors;
- (e) the elimination of discrimination in respect of employment and occupation; and
- (f) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

For greater certainty, the setting of standards and levels in respect of minimum wages by each Party shall not be subject to obligations under this Chapter. Each Party's obligations under this Chapter pertain to enforcing the level of the general minimum wage established by that Party; and

statutes and regulations and **statutes or regulations** means:

for the United States, acts of Congress or regulations promulgated pursuant to acts of Congress that are enforceable by action of the central level of government and, for purposes of this Chapter, includes the Constitution of the United States."

9. *In Chapter Eighteen (Environment):*

A. *Article 18.1 shall be revised to read as follows:*

"Recognizing the sovereign right of each Party to establish its own levels of domestic environmental protection and environmental development priorities, and to adopt or modify accordingly its environmental laws and policies, each Party shall strive to ensure that those laws and policies provide for and encourage high levels of environmental protection and shall strive to continue to improve its respective levels of environmental protection."

B. *After Article 18.1, insert a new article as follows and the remaining articles, footnotes, and article references shall be renumbered accordingly:*

"Article 18.2: Environmental Agreements¹

A Party shall adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under the multilateral environmental agreements listed in Annex 18.2 ("covered agreements").²

C. *Renumbered Article 18.3 shall be revised to read as follows:*

- "1. (a) A Party shall not fail to effectively enforce its environmental laws, and its laws, regulations, and other measures to fulfill its obligations under the covered agreements, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties, after the date of entry into force of this Agreement.
- (b) (i) The Parties recognize that each Party retains the right to exercise prosecutorial discretion and to make decisions regarding the allocation of environmental enforcement resources with respect to other environmental laws determined to have higher priorities. Accordingly, the Parties understand that with respect to the enforcement of environmental laws and all laws, regulations, and other measures to fulfill a Party's obligations under the covered agreements, a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable, articulable, *bona fide* exercise of such discretion, or results from a reasonable, articulable, *bona fide* decision regarding the allocation of such resources.
- (ii) The Parties recognize the importance of the covered agreements. Accordingly, where a Party's course of action or inaction relates to laws, regulations, and all

¹ To establish a violation of Article 18.2 a Party must demonstrate that the other Party has failed to adopt, maintain, or implement laws, regulations, or other measures to fulfill an obligation under a covered agreement in a manner affecting trade or investment between the Parties.

² For purposes of Article 18.2: (1) "covered agreements" shall encompass those existing or future protocols, amendments, annexes, and adjustments under the relevant agreement to which both Parties are party; and (2) a Party's "obligations" shall be interpreted to reflect, *inter alia*, existing and future reservations, exemptions, and exceptions applicable to it under the relevant agreement.

other measures to fulfill its obligations under covered agreements, that shall be relevant to a determination under clause (i) regarding whether an allocation of resources is reasonable and *bona fide*.

2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in their respective environmental laws. Accordingly, a Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces the protections afforded in those laws in a manner affecting trade or investment between the Parties.

3. Paragraph 2 shall not apply where a Party waives or derogates from an environmental law pursuant to a provision in its environmental law providing for waivers or derogations, provided that the waiver or derogation is not inconsistent with the Party's obligations under a covered agreement.³

4. Annex 18.3.4 sets out additional provisions with respect to forest sector governance.

5. Nothing in this Chapter shall be construed to empower a Party's authorities to undertake environmental law enforcement activities in the territory of another Party other than as specifically provided in Annex 18.3.4."

D. *Paragraph 7 of renumbered Article 18.7 shall be deleted.*

E. *Paragraph 1 of renumbered Article 18.8 shall be revised to read as follows:*

"1. Any person of a Party may file a submission asserting that a Party is failing to effectively enforce its environmental laws. Such submissions shall be filed with a secretariat or other appropriate body (secretariat) that the Parties designate."

F. *Renumbered Article 18.12 shall be revised to read as follows:*

"Article 18.12: Environmental Consultations and Panel Procedure

1. A Party may request consultations with another Party regarding any matter arising under this Chapter by delivering a written request to a contact point designated by the other Party for this purpose.

2. The consultations shall begin promptly after delivery of the request. The request shall contain information that is specific and sufficient to enable the Party receiving the request to respond.

3. The consulting Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may seek advice or assistance from any person or body they deem appropriate in order to fully examine the matter at issue. If the matter arises under Article 18.2, or under both that Article and another provision of this Chapter, and involves an issue related to a Party's

³ Paragraph 3 does not apply with respect to any law of Peru with respect to the forest sector.

⁴ The Parties shall designate the secretariat and provide for related arrangements through an exchange of letters or understanding between the Parties.

obligations under a covered agreement, the Parties shall endeavor to address the matter through a mutually agreeable consultative or other procedure, if any, under the relevant agreement, unless the procedure could result in unreasonable delay.⁷

4. If the consulting Parties fail to resolve the matter pursuant to paragraph 3, a consulting Party may request that the Council be convened to consider the matter by delivering a written request to the contact point of each of the other consulting Parties.⁸

5. (a) The Council shall promptly convene and shall endeavor to resolve the matter expeditiously, including, where appropriate, by consulting governmental or outside experts and having recourse to such procedures as good offices, conciliation, or mediation.
- (b) When the matter arises under Article 18.2, or under both that Article and another provision of this Chapter, and involves an issue relating to a Party's obligations under a covered agreement, the Council shall:
- (i) through a mechanism that the Council establishes, consult fully with any entity authorized to address the issue under the relevant agreement; and
- (ii) defer to interpretative guidance on the issue under the agreement to the extent appropriate in light of its nature and status, including whether the Party's relevant laws, regulations, and other measures are in accordance with its obligations under the agreement.

6. If the consulting Parties have failed to resolve the matter within 60 days of a request under paragraph 1, the complaining Party may request consultations under Article 21.4 (Consultations) or a meeting of the Commission under Article 21.5 (Intervention of the Commission) and, as provided in Chapter Twenty-One (Dispute Settlement), thereafter have recourse to the other provisions of that Chapter. The Council may inform the Commission of how the Council has endeavored to resolve the matter through consultations.

7. No Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first seeking to resolve the matter in accordance with paragraphs 1 through 5.

8. In a dispute arising under Article 18.2, or under both that Article and another provision of this Chapter, that involves an issue relating to a Party's obligations under a covered agreement, a panel convened under Chapter

⁷ The Parties understand that for purposes of paragraph 3, where a covered agreement requires a decision to be taken by consensus, such a requirement could create an unreasonable delay.

⁸ For purposes of paragraphs 4, 5, and 6, the Council shall consist of senior level officials with environmental responsibilities of the consulting Parties or their designees.

Twenty-One (Dispute Settlement) shall in making its findings and determination under Articles 21.13 (Initial Report) and 21.14 (Final Report)⁹:

- (a) consult fully, through a mechanism that the Council establishes, concerning that issue with any entity authorized to address the issue under the relevant environmental agreement;
- (b) defer to any interpretative guidance on the issue under the agreement to the extent appropriate in light of its nature and status, including whether the Party's relevant laws, regulations, and other measures are in accordance with its obligations under the agreement; and
- (c) where the agreement admits of more than one permissible interpretation relevant to an issue in the dispute and the Party complained against relies on one such interpretation, accept that interpretation for purposes of its findings and determination under Articles 21.13 and 21.14.¹⁰

G. *After paragraph 3 of renumbered Article 18.13, insert a new paragraph as follows:*

"4. In the event of any inconsistency between a Party's obligations under this Agreement and a covered agreement, the Party shall seek to balance its obligations under both agreements, but this shall not preclude the Party from taking a particular measure to comply with its obligations under the covered agreement, provided that the primary purpose of the measure is not to impose a disguised restriction on trade."¹¹

H. *Renumbered Article 18.14 shall be revised to read as follows:*

"For purposes of this Chapter:

environmental law means any statute or regulation of a Party, or provision thereof, the primary purpose of which is the protection of the environment, or the prevention of a danger to human, animal, or plant life or health, through:

- (a) the prevention, abatement, or control of the release, discharge, or emission of pollutants or environmental contaminants;
- (b) the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the dissemination of information related thereto;

⁹ For greater certainty, the consultations and guidance in this paragraph are without prejudice to a panel's ability to seek information and technical guidance from any person or body consistent with Article 21.12 (Role of Experts).

¹⁰ The guidance in subparagraph (c) shall prevail over any other interpretive guidance.

¹¹ For greater certainty, paragraph 4 is without prejudice to multilateral environmental agreements other than covered agreements.

- (c) the protection or conservation of wild flora or fauna, including endangered species, their habitat, and specially protected natural areas;¹² or
- (d) for Peru, the management of forest resources,

in areas with respect to which a Party exercises sovereignty, sovereign rights, or jurisdiction, but does not include any statute or regulation, or provision thereof, directly related to worker safety or health.

Laws, regulations, and all other measures to fulfill its obligations under a covered agreement means a Party's laws, regulations, and other measures at the central level of government.

For the United States, **statute or regulation** means an act of Congress or regulation promulgated pursuant to an act of Congress that is enforceable by action of the central level of government.

For Peru, **statute or regulation** means a law of Congress or Decree or Resolution promulgated by the central level of government to implement a law of Congress that is enforceable by action of the central level of government.

For Peru, **indigenous and other communities** means those communities which are defined in Article 1 of Andean Decision 391."

1. *After renumbered Article 18.14, insert Annex 18.2 to read as follows:*

"Covered Agreements

1. For purposes of this Chapter, **covered agreement** means a multilateral environmental agreement listed below to which both Parties are party:

- (a) the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, done at Washington, March 3, 1973, as amended;
- (b) the *Montreal Protocol on Substances that Deplete the Ozone Layer*, done at Montreal, September 16, 1987, as adjusted and amended;
- (c) the *Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973*, done at London, February 17, 1978, as amended;
- (d) the *Convention on Wetlands of International Importance Especially as Waterfowl Habitat*, done at Ramsar, February 2, 1971, as amended;
- (e) the *Convention on the Conservation of Antarctic Marine Living Resources*, done at Canberra, May 20, 1980;
- (f) the *International Convention for the Regulation of Whaling*, done at Washington, December 2, 1946; and

¹² The Parties recognize that such protection or conservation may include the protection or conservation of biological diversity.

- (g) the *Convention for the Establishment of an Inter-American Tropical Tuna Commission*, done at Washington, May 31, 1949.

2. The Parties may agree in writing to modify the list in paragraph 1 to include any other multilateral environmental agreement.”

J. *After Annex 18.2 insert Annex 18.3.4 to read as follows:*

“Annex 18.3.4

Annex on Forest Sector Governance¹³

1. The Parties recognize that trade associated with illegal logging, and illegal trade in wildlife, including wildlife trafficking, undermine trade in products from legally harvested sources, reduce the economic value of natural resources, and weaken efforts to promote conservation and sustainable management of resources. Accordingly, each Party commits to combat trade associated with illegal logging and illegal trade in wildlife. The Parties recognize that good forest sector governance is critical to promoting the economic value and sustainable management of forest resources. Accordingly, each Party commits to take action under this Annex to enhance forest sector governance and promote legal trade in timber products.

Strengthening Forest Sector Governance

2. The Parties recall their joint efforts, both through bilateral initiatives and in relevant international fora, to address matters relating to trade in timber products. The Parties also note the considerable progress that Peru has made in developing the institutions and legal and regulatory framework necessary to ensure the sustainable management of its forest resources.

3. In order to further strengthen the governance of its forest sector, Peru shall, within 18 months after the date of entry into force of this Agreement, take the following actions:

- (a) Increase the number and effectiveness of personnel devoted to enforcing Peru’s laws, regulations, and other measures relating to the harvest of, and trade in, timber products, with a view to substantially reducing illegal logging and associated trade in these products. In this context, Peru shall:
 - (i) Increase the number of enforcement personnel in national parks and concessions and in forest regions designated under Peruvian law as “indigenous protected” areas; and
 - (ii) Develop and implement an anti-corruption plan for officials charged with the administration and control of forest resources.
- (b) Provide criminal and civil liability at adequate deterrent levels for actions that impede or undermine the sustainable management of Peru’s forest resources. Such actions shall include:
 - (i) Threats or violence against, or other intimidation of, government personnel engaged in enforcement of Peru’s laws, regulations and other measures relating to the harvest of, and trade in, timber products;

¹³ For greater certainty, this Annex is subject to Chapter Twenty-One (Dispute Settlement). No Party may have recourse to dispute settlement with respect to a matter arising under this Annex without first seeking to resolve the matter in accordance with Article 18.12.

- (ii) Knowingly creating, using, presenting or providing false information on any material document relating to enforcement of Peru's laws, regulations and other measures relating to the harvest of, and trade in, timber products, including forest management plans, annual operating plans, applications for permits/concessions, and transportation documents;
 - (iii) Obstructing an investigation, verification, or audit conducted by government personnel engaged in enforcement of Peru's laws, regulations and other measures relating to the harvest of, and trade in, timber products;
 - (iv) Knowingly harvesting or purchasing timber or timber products from areas or persons not authorized under Peruvian law; or knowingly transporting timber or timber products taken from areas or persons not authorized under Peruvian law; and
 - (v) Providing to a government official, or receiving as a government official, compensation, whether monetary or in kind, in exchange for particular action taken in the course of that official's enforcement of Peru's laws, regulations and other measures relating to the harvest of, and trade in, timber products.
- (c) Impose criminal and civil penalties designed to deter violations of laws, regulations and other measures relating to the harvest of, and trade in, timber products. This shall include:
- (i) Substantially increasing criminal penalties prescribed in Article 310 of Peru's Penal Code (Código Penal, Decreto Legislativo No. 635, 8 April 1991); and
 - (ii) Suspending the right to export the product as to which a law, regulation, or other measure has been violated.
- (d) Adopt and implement policies to monitor the extent and condition of tree species listed in any Appendix of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), including by:
- (i) Conducting a comprehensive inventory including analysis of the populations of these tree species to determine their geographic distribution, density, size, age-class structure and regeneration dynamics, as well as threats to their survival;
 - (ii) Conducting technical studies to determine product yields for the purpose of calculating accurate conversion factors and informing decisions on export quotas; and
 - (iii) Providing for technical review and periodic updating of these inventory and product yield studies and making their results publicly available.
- (e) Finalize and adopt a strategic plan of action to implement the CITES Appendix II listing of Bigleaf Mahogany by decree or resolution promulgated by the central level of government, and endeavor to provide financial resources adequate to carry out the plan.
- (f) Establish an annual export quota for bigleaf mahogany, covering logs, sawn wood, veneer sheets and plywood, at a level and in a manner consistent with

Article IV of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the advice of Peru's CITES Scientific Authority for forest species. Peru shall:

- (i) Include in the annual export quota only bigleaf mahogany harvested from Native Communities or concessions for which Instituto Nacional de Recursos Naturales (INRENA) has approved and verified annual operating plans, subject to oversight by the Organismo Supervisor de los Recursos Forestales Maderables (OSINFOR);
 - (ii) Ensure that the export quota takes into account studies conducted under sub-paragraph (d); and
 - (iii) Ensure that the export quota does not exceed the range recommended by Peru's Scientific Authority for Forest Species.
- (g) Improve the administration and management of forest concessions. Peru shall:
- (i) Build on existing mechanisms to implement a competitive and transparent process to award concessions;
 - (ii) Review proposed annual operating plans for such concessions and, if a plan is approved, make it publicly available and regularly verify in a timely manner that a concessionaire is complying with the terms of the plan; and
 - (iii) Physically inspect area designated for the extraction of any CITES-listed tree species prior to approving or verifying an operating plan and produce a publicly available report detailing the results of the verification. OSINFOR, in its oversight of INRENA, shall supervise the physical inspections and, as necessary, participate in the physical inspections.
- (h) Develop and promote the use of tools that complement and strengthen regulatory controls and verification mechanisms relating to the harvest of, and trade in, timber products. In this context, Peru shall:
- (i) Take into account the views of local and indigenous communities, non-governmental organizations, and the private sector, including operators of timber harvesting concessions;
 - (ii) Develop systems to verify the legal origin and chain of custody of CITES-listed tree species and develop systems, including requirements for management oversight and record keeping, to reliably track specimens from harvest through transport, processing and export;^{14 15}
 - (iii) Fully implement existing laws and regulations for forest sector governance and strengthen institutions responsible for enforcing these laws and any aspect of forest management in Peru. In this context, Peru shall establish OSINFOR as required under Forest Law No.

¹⁴ An effective chain of custody system should provide management oversight, document control, material separation and tracking, purchasing and receiving, processing, shipping and sales, claims and training, and may employ innovating tracking technologies, such as barcodes.

¹⁵ The Parties note Peru has mechanisms in place to promote the use of voluntary certification programs that address legal origin and chain of custody issues for CITES-listed tree species.

27308. OSINFOR shall be an independent and separate agency and its mandate shall include supervision of verification of all timber concessions and permits; and

- (iv) Identify within the Government of Peru a focal point, with appropriate and sufficient authority and staff to investigate violations of laws and regulations for forest sector governance. The focal point shall (a) have a transparent process for the reporting of forest sector crimes; (b) ensure coordination and the accurate and timely flow of information between relevant technical and financial agencies; and (c) where appropriate prosecute or refer violations for prosecutions.
- (i) Strengthen, protect and increase the capacity of indigenous communities to manage their lands for commercial timber production, including by ensuring that any commercial timber production has the approval of the Peruvian government.
- (j) Appropriately identify protected areas and concessions.

4. The Parties are committed to work cooperatively to implement the actions required under the preceding paragraph, including through capacity-building and other joint initiatives to promote the sustainable management of Peru's forest resources. The Parties shall develop and implement any capacity-building activities they undertake pursuant to this paragraph in accordance with the Environmental Cooperation Agreement, as provided for in Article 18.10. Such capacity building activities may include:

- (a) Strengthening the legal, policy, and institutional framework governing the forest estate and the international trade in forest products;
- (b) Building institutional capacity for forest law enforcement and the international trade in forest products;
- (c) Improving the performance of the forest concession system in meeting economic, social, and ecological objectives; and,
- (d) Increasing public participation and improve transparency in forest resource planning and management decision-making.

Verification and Enforcement Measures

5. The Parties shall cooperate for the purpose of enforcing or assisting in the enforcement, and deterring circumvention, of the laws, regulations, and other measures of each Party related to forest sector governance, including those related to the harvest of, and trade in, timber products.

Audits of Producers and Exporters

- 6. (a) Peru shall conduct periodic audits¹⁶ of producers and exporters in its territory of timber products exported to the United States, and verify that exports of those products to the United States comply with all applicable laws, regulations, and other measures of Peru governing the harvest of, and trade in,

¹⁶ Such audits shall be conducted at least every five years and may be conducted by a mutually agreed third party.

timber products including, in the case of tree species listed in CITES Appendix II, relevant chain of custody requirements.

- (b) In addition, on the written request of the United States, Peru shall conduct an audit of a particular producer or exporter in its territory as specified in the request, with a view to evaluating the compliance of that producer or exporter with those laws, regulations, and other measures. On written request of the United States, Peru shall provide a written summary of its finding of the request audit. The United States will treat any documents or information exchanged in the course of an audit as confidential if such documents or information had been designated by Peru as confidential under Article 5.6.

Verifications

7. On the written request of the United States, Peru shall verify whether, with respect to a particular shipment of timber products from Peru to the United States, the exporter or producer of those products has complied with applicable laws, regulations, and other measures of Peru governing the harvest of, and trade in, those products.¹⁷

8. A request under paragraphs 6 or 7 shall identify:

- (a) the relevant producer or exporter;
- (b) Peru's laws, regulations, and other measures at issue; and
- (c) the reason the United States considers an audit or verification to be warranted.

9. The United States shall, to the extent authorized under its law, provide Peru with trade and transit documents and other information that will assist Peru in conducting a verification under paragraph 7. Each Party shall treat any documents or information exchanged in the course of a verification as if such documents or information had been designated as confidential by the other Party under Article 5.6 (Confidentiality).

10. To facilitate a verification under paragraph 7, Peru shall, unless the Parties agree otherwise, visit the premises of the exporter or producer, or of any other enterprise in the territory of Peru in the chain of production or transportation for the product concerned. The following procedures shall apply with respect to such visits:

- (a) Peru shall inform the United States in writing of a visit it proposes to conduct at least 20 days before it takes place.
- (b) If the United States seeks to have its officials participate in the visit, its competent authorities shall transmit a request to Peru in writing no later than 10 days before the visit, identifying the names and titles of the officials the United States proposes to participate in the visit.
- (c) Peru shall permit the United States officials identified in the request to participate in the visit unless Peru informs the United States competent authorities otherwise in writing at least five days before the visit.
- (d) With respect to the shipment that is the subject of the verification under paragraph 7, Peru shall obtain and examine copies of documents relating to the enterprise's compliance with Peru's laws, regulations, and other measures

¹⁷ The United States may detain a shipment which is subject to a verification request pending the result of the verification and the notification provided under paragraph 13.

governing the harvest of, and trade in, timber products including, in the case of shipments of products derived from tree species listed in a CITES Appendix, relevant chain of custody requirements.

- (e) No later than 10 days after a visit, the United States officials that participated in the visit shall provide Peru with their written observations, if any, regarding the shipment.

11. If Peru denies a request under paragraph 10(b) for the identified officials of the United States to participate in a visit, the United States may deny entry to the shipment that is the subject of the verification.

12. Unless the Parties agree otherwise, Peru shall provide the United States a written report on the results of any verification it conducts in response to a request under paragraph 7 within 45 days after the date the United States delivers the request or, if Peru conducts a verification visit in response to the request, within 75 days after the date the United States delivers the request. The report shall take into account any written observations that United States officials have provided under paragraph 10(e) and shall include an assessment, based on documents examined in the course of the verification, of whether the enterprise has complied with Peru's applicable laws, regulations, and other measures. The report shall append all relevant documents and facts supporting Peru's assessment.

Compliance Measures

13. Within a reasonable time after Peru provides a report under paragraph 12, the United States shall notify Peru in writing of any actions it will take with respect to the matter, and the duration of such actions, taking into account, *inter alia*, that report, information that United States customs authorities have obtained regarding the shipment or relevant enterprise, and information that United States officials obtained during the verification visit.

- (a) These actions may include:

- (i) denying entry to the shipment that was the subject of the verification and
- (ii) where an enterprise has knowingly provided false information to Peruvian or United States officials regarding a shipment, denying entry to products of that enterprise derived from any tree species listed in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

- (b) The United States shall cease action under sub-paragraph (a)(ii) by the later of

- (i) the end of the period specified in its written notification, or
- (ii) 15 days after the date on which Peru submits proof to the United States of an audit under paragraph 6 that concludes the enterprise complies with all applicable laws, regulations, and other measures of Peru governing the harvest of, and trade in, timber products.

14. If Peru does not provide a verification report under paragraph 12 within the time prescribed in that paragraph, the United States may take such actions with respect to the exporter's timber products as it considers appropriate, including those described in paragraph 13.

CITES Commitments

15. Each Party reaffirms its commitment to work within the framework of CITES to protect CITES-listed species. To this end, the Parties shall cooperate and take action under this Annex in a manner consistent with each Party's obligations under CITES and in a manner that takes into account decisions and resolutions of the CITES Conference of the Parties as well as its Standing Committee, Animals Committee, and Plants Committee. Furthermore, nothing in this Annex shall limit the authority of either Party to take action consistent with its legislation implementing CITES.

Sub-Committee on Forest Sector Governance

16. In order to facilitate the cooperation provided for in this Annex, and provide a forum for them to share views and information on any matter arising under this Annex, the Parties hereby establish a Sub-Committee on Forest Sector Governance under both the Committee on Trade in Goods and the Environmental Affairs Council.

17. The Parties shall consult regularly through the Sub-Committee and shall exchange appropriate, non-confidential information on bilateral trade in timber products to the extent consistent with and as authorized under their respective laws and policies. This shall include information such as: customs data, information on efforts to combat illegal logging and associated trade (including interdiction, confiscations, arrests, prosecutions and convictions), implementation of CITES requirements and other relevant information.

18. Unless they otherwise agree, the Parties shall make any information they exchange under paragraph 17 publicly available in a timely manner, subject to any conditions the Sub-Committee may establish.

Public Comments

19. Each Party shall establish a procedure for the public to submit comments regarding any matter under this Annex. Each Party shall take these comments into account and transmit them to the other Party if they are not publicly available.

Review

20. The Parties shall review the operation of this Annex within three years after the date of entry into force of this Agreement."

10. *In Chapter Twenty-One (Dispute Settlement):*

A. *Paragraph 2 of Article 21.5 shall be revised to read as follows:*

"2. A consulting Party may also request in writing a meeting of the Commission where consultations have been held pursuant to Article 17.7 (Cooperative Labor Consultations), 18.12 (Environmental Consultations and Panel Procedure), or 7.7 (Committee on Technical Barriers to Trade)."

B. *Subparagraph (d) of paragraph 1 of Article 21.9 shall be revised to read as follows:*

"(d) each disputing Party shall endeavor to select panelists who have expertise or experience relevant to the subject matter of the dispute. In addition, in any dispute arising under Chapter Seventeen (Labor) or Eighteen (Environment), panelists other than those selected by lot shall

have expertise or experience relevant to the subject matter under dispute.”

C. *Paragraph 9 of Article 21.16 shall be deleted and the following paragraph shall be renumbered accordingly.*

D. *Article 21.17 shall be deleted and the remaining articles shall be renumbered accordingly.*

E. *Paragraph 2 of renumbered Article 21.17 shall be revised to read as follows:*

“2. If the panel decides that the Party complained against has eliminated the non-conformity or the nullification or impairment, the complaining Party or Parties shall promptly reinstate any benefits that Party has or those Parties have suspended under Article 21.16 and the Party complained against shall no longer be required to pay any monetary assessment it has agreed to pay under Article 21.16.6.”

F. *Renumbered Article 21.18 shall be revised to read as follows:*

“The Commission shall review the operation and effectiveness of Article 21.16 not later than five years after the Agreement enters into force, or within six months after benefits have been suspended or monetary assessments have been paid in five proceedings initiated under this Chapter, whichever occurs first.”

G. *Annex 21.17 shall be deleted.*

11. *In Chapter Twenty-Two (Exceptions):*

At the end Article 22.2, insert a new footnote 2, to read as follows:

“For greater certainty, if a Party invokes Article 22.2 in an arbitral proceeding initiated under Chapter Ten (Investment) or Chapter Twenty-One (Dispute Settlement), the tribunal or panel hearing the matter shall find that the exception applies.”

This Amendment shall enter into force on the date on which the Agreement enters into force.

The English and Spanish texts of this Amendment are equally authentic.

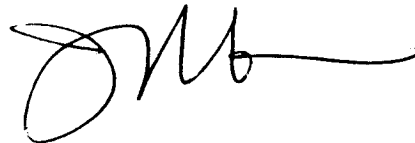
IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Amendment.

DONE in duplicate at

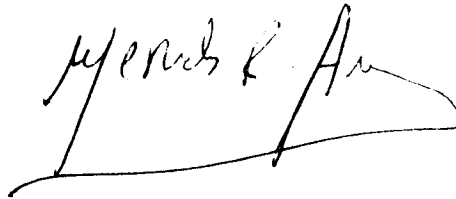
Washington, District of Columbia, on June 24, 2007.

Lima, on June 25, 2007.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

A handwritten signature in black ink, appearing to be "J. M. ...", written over a horizontal line.

FOR THE GOVERNMENT OF THE REPUBLIC OF PERU:

A handwritten signature in black ink, appearing to be "Miguel A. ...", written over a horizontal line.